

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>1531 BROADWAY LLC,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 56952</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 28, 2011, Louesa Maricle and Debra A. Baumbach presiding. Petitioner was represented by David G. Eisenstein, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax year 2009 and challenging the classification of the subject property.

The only issue at hearing was the proper classification of the subject property, based on legal arguments. Petitioner and Respondent stipulated to the facts of the case and to the admission of all exhibits.

Subject property is described as follows:

**1531 Broadway, Boulder, Colorado
Schedule No. R0002047**

The subject property is a two-story Victorian style structure built in 1909. The subject is located approximately ten blocks away from the downtown core business center of Boulder and three blocks south of the University of Colorado.

Petitioner argues that the property was erroneously classified as commercial and should have been classified as residential for tax year 2009. Respondent argues that the property was correctly classified as commercial for tax year 2009.

The subject property was built in 1909 and continuously used as a residence until approximately 1999. From 1999 to 2008, the property was utilized as a real estate office. On August 19, 2008, Petitioner entered into a contract, purchasing the property with the intent to convert the property into multi-family dwellings. It had ceased being used as a real estate office and was vacant at the time the contract was entered into. Petitioner subsequently closed on the sale on December 17, 2008 and began working with an architect to redevelop the subject property for residential purposes. Building permits were submitted to Boulder County on January 20, 2009. The zoning for the property is BT-2, which allows for both residential and commercial uses.

Petitioner believes the property should have been reclassified as residential pursuant to the classification standards outlined by Colorado Statute, the Assessors Reference Library (ARL), and case law. Petitioner argues that, pursuant to statutory law, assessors are required to follow the guidelines established in the ARL when assessing property. *See generally* Section 39-1-104(11)(a)(I), C.R.S.

As provided by the ARL, Colorado Statute, and case law, real property should be classified in accordance with its actual use as of the assessment date. *See Farny v. Bd of Equalization of Dolores County*, 985 P.2d 106, 109 (Colo. App. 1999); Section 39-1-104(10.2)(d); ARL, Vol. 2, p. 6.1. If an assessor cannot determine the actual use of the property “the property should be classified according to its most probable use.” ARL, Vol. 2, p. 6.1. When the use of a property changes after January 1, the assessment date, the classification assigned to the property as of January 1 remains in place until the following January 1. *Id.* at 6.7. Petitioner argues that the change in use of the property occurred on December 17, 2008 when Petitioner purchased the property for residential use. Therefore, on the assessment date of January 1, 2009, the property should have been classified as residential.

Section 39-1-102(14.4), C.R.S. defines “residential land” as “a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and which is used as a unit in conjunction with the residential improvements located thereon.” According to Section 39-1-102(14.3), C.R.S., sets forth that, for the buildings to qualify as “residential improvements,” the structure must be “designed for use predominantly as a place of residence by a person, family, or families.”

Petitioner contends that the primary use of the property has been residential and was only used as a commercial office for a short period of time. There were no changes made to the residence to indicate only commercial use because the design had not been changed and the kitchen, bedrooms, and bathrooms were fully functional at the time of the sale.

Another guideline in determining if residential classification is proper is whether there was a use other than residential on the assessment date. ARL, Vol. 2, p. 6.2. A residential classification is not lost if a home stands vacant for a period of time, simply because it was not “actually” being used as a residence. *Mission Viejo v. Douglas County Bd. of Equalization*, 881 P.2d 462, 465 (Colo. App. 1994). Actual use is only one relevant consideration in determining whether the home remains “designed for use” predominately as a residence; a second important factor to consider is zoning. *Id.* As of January 1, 2009, Petitioner asserts that there was no commercial use, there was no change in design, and the property was vacant. .

Respondent contends the property was properly classified as commercial use as of the assessment date. Respondent had a different interpretation of the following passage from the ARL, “When the use of a property changes after January 1, the assessment date, the classification assigned to the property as of January 1 remains in place until the following January 1.” ARL, Vol. 2, p. 6.1. Respondent believes that the use had not changed, as of the assessment date, because the property had been used as a commercial real estate office consecutively for over 12 years and the property had been listed for sale as commercial use, not residential.

Respondent asserts that Petitioners intended future use, when it purchased the subject property, was not the actual use of the property for the tax year 2009 and is not relevant. Petitioner would need to show there had been residential use for reclassification. Prior to the sale, there was no indication the property had any residential use and vacancy in a property does not constitute residential use. The zoning for the property is BT-2, allowing for a wide range of mixed uses, both commercial and residential.

Respondent contends that the holding in *Mission Viejo* supports the subject property being classified as commercial. *See Mission Viejo*, 881 P.2d at 465 (stating that a mansion originally built to be a residence can be classified as commercial; relevant factors for classifying property are actual use of structure, zoning and other applicable use restrictions, and probable use). Respondent asserts that the subject property was correctly classified as commercial even though it was designed to be used as a residence because the property is currently zoned for residential and commercial use, the actual use of the property, at the time of assessment, was commercial, and the architectural design does not preclude other uses or classifications.

Respondent presented sufficient probative evidence and testimony to prove that the property was correctly classified for tax year 2009.

The Board does not find Petitioner’s excerpt from *Mission Viejo* (a residential classification is not lost if a home stands vacant for a period of time, simply because it was not “actually” being used as a residence) to be applicable to the subject property because the subject property did not lose its residential classification for being vacant.

By contrast, the Board agrees with Respondent’s interpretation of *Mission Viejo* and finds the court’s holding to be analogous to the facts set forth in this matter. The property was designed for residential use, but in accordance with *Mission Viejo*, that does not preclude commercial classification. *Id.* When looking at the other factors to consider in determining classification (actual use, zoning, other restrictions, and probable use), the Board does not find the property’s zoning, restrictions, and probable use to be particularly guiding because, under those criteria, the property could be either residential or commercial. However, the Board finds the actual use, as of the assessment date, to be more indicative. The Board was convinced that the actual use was commercial because the property had been consecutively classified as such for over 12 years, it was listed for sale as a commercial property, and the use was not actually converted to residential as of the assessment date. Accordingly, the Board finds that the subject was properly classified as commercial.

The Board further agrees with Respondent's application of ARL, Vol. 2, p. 6.2 (stating that [w]hen the use of a property changes after January 1, the assessment date, the classification assigned to the property as of January 1 remains in place until the following January 1). Because the Board finds that property was properly classified as commercial, the Board was convinced Respondent appropriately maintained the subject property's classification as commercial.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

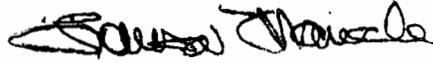
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 25 day of July 2011.

BOARD OF ASSESSMENT APPEALS

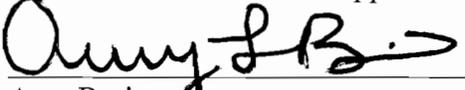


Louesa Maricle



Debra A. Baumbach

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Amy Bruins